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material as said base assembly and each of which is affixed to said sides of said base assembly; and

said channels each respectively have a heat resistant ball bearing of a smaller dimension than said channels, said bearings loosely disposed within each of said longitudinal and lateral channels; and

wherein said bearings are visible within the channels.

12. (NEW) A method for cooking with a Dutch Oven stand which reduces the risk of unwanted fire comprising the steps of:

providing a Dutch Oven stand means having an upwardly open, uncovered and unobstructed receptacle defined by solid, non-perforated sides and a solid, non-perforated base; and said base has a plurality of foldable legs of predetermined fixed length rotatably coupled to said base;

folding out said legs;

placing said stand onto a solid surface;

putting solid cooking fuel into said receptacle;

placing a Dutch Oven onto said base.

REMARKS — GENERAL

By the above amendment, Applicants have rewritten claims and have added claims to define the invention more particularly and distinctly so as to overcome the rejections in the O.A. and to define the invention patentably over the referenced art. Applicant first discusses the §102 rejections and then the §103 rejections.

Claim Rejections In O.A. - 35 USC §102 over Hanson overcome

The last O.A. rejected claims 1-2, and 8-10 under 35 USC §102(b) as being anticipated by Hanson. Independent claim 1 has been rewritten to define patentably over the Hanson reference. Original Independent Claim 10 has been cancelled. Original dependent claims 8-9 have been cancelled. Original dependent claim 2 remains in the application and is dependent upon claim 1 as amended herein.

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Applicants respectfully request reconsideration of this 102 (b) rejection, for the following reasons:

- (1) The structure of the instant invention as now claimed is not shown in Hanson. More particularly, Figs. 1-2 of Hanson do not show a receptacle which is upwardly open, uncovered and unobstructed, but rather show a cooking grate on the "box like casing C" referred to in Hanson (Page 1, lines 45-46). (Note: As discussed elsewhere in this paper, applying a grate as shown in Hanson to Applicant's invention would interfere with the intended use of a Dutch Oven as contemplated by the Dutch Oven Stand of the instant invention.)
- (2) Additionally, Hanson shows an adjustable leg structure 6 with supporting braces 16. The instant invention does not have or claim adjustable legs or supporting braces between the legs. (Note: As discussed elsewhere in this paper, Applicant's invention is not addressing the need of providing adjustable legs.)
- (3) Original independent claim 10 and dependent claims 8-9 have been cancelled thereby removing any further basis for rejection of such claims.
- (4) Claim 2 remains in the application but is now dependent on independent claim 1 as amended.
- (5) In summary, the instant invention as now claimed does not have the physical structures of Hanson and it is respectfully submitted the 35 USC §102(b) rejection is overcome.

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Claim Rejections in O.A. - 35 USC §102 over Chen overcome

The last O.A. also rejected claims 1-5, and 8-10 under 35 USC §102(b) as being anticipated by Chen. Independent claim 1 has been rewritten to define patentably over the Chen reference. Original Independent Claim 10 has been cancelled. Original dependent claims 3-5, 8-9 have been cancelled. Original dependent claim 2 remains in the application and is dependent upon claim 1 as amended herein.

Applicants respectfully request reconsideration of this rejection, for the following reasons:

- (1) The structure of the Instant Invention as now claimed is not shown in Chen. More particularly, Figs. 1-7 of Chen do not show a non-perforated receptacle which is upwardly open, uncovered and unobstructed, as Applicant has now amended the claims, but rather Chen shows a portable barbeque grill with a plurality of rotatable food cooking grates coupled to and covering a receptacle having ventilating perforations 8. [as best illustrated in Fig 2 of Chen] (Note: as will be addressed more fully below with respect to the 35 USC §103 discussion, the ventilating perforations in Chen are not contemplated by Applicant's invention and in fact teach away from Applicant's invention. Ventilation perforations do not for example, prevent hot ashes and other combustible fuel from escaping the container in Chen, thereby having perforations does not address an important aspect of Applicant's invention i.e. to reduce the likelihood of unwanted fire while cooking with a Dutch Oven.)
- (2) Applicant's has canceled claims 3-5 thereby removing any basis for further rejection of these claims.
(Note: Notwithstanding, Applicant's invention does not disclose rotatable food supporting grates 2 as does Chen in Chen Fig 1. Chen contemplates the use of these grates to cook food directly on

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the grates, not support of a Dutch Oven. As will be discussed more fully below with respect to 35 USC §103 discussion, Chen is directed to a portable barbeque grill which provides circular food supporting grates which rotate to cook food which is placed directly on such grates. Chen is not addressing, suggesting or motivating one to make the O.A.'s suggested combination to address the needs of Applicant's invention.)

- (2) In summary, the instant invention as now claimed does not have the physical structures of Chen and it is respectfully submitted the 35 USC §102(b) rejection is overcome.

Claim 1 as amended, New claims 11 and 12 are also not obvious

Applicant also respectfully submits, as will be set out more fully in connection with Applicant's discussion of the last O.A.'s specific 35 USC §103 rejections, that the instant invention as now claimed in Claim 1, and new claims 11 – 12, are not obvious in view of Hanson or under any combination of Hanson with Chen, Thibodeau or other references primarily because there is no motivation, teaching or suggestion in Hanson or the other references to provide a portable stand for use with Dutch Oven cooking that solves an important need of Applicant's invention to reduce the likelihood of unwanted fire.

Applicants discuss the 35 USC §103 rejections made in the last O.A. in the text below with more particularity and also include a discussion in context to highlight the non-obviousness of amended claim 1, and new claims 11-12.

Claim rejections in O.A. – 35 USC § 103 over Hanson in view of Thibodeau overcome

The last O.A. rejected dependent claim 6-8 under 35 U.S.C. 103(a) as being unpatentable over Hanson in view of Thibodeau. Claim 7-8 have been cancelled. Claim 6 has been amended to define patentably over these references, and any combination thereof. Applicant respectfully requests reconsideration of this rejection, for the following reasons:

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- (1) There is no justification or motivation, in Hanson and Thibodeau, or in any other prior art separate from Applicant's disclosure, which suggests that these references be combined, much less in the manner proposed.
- (2) The proposed combination would not be physically operative in the context of the use of the instant invention. If the proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. In re Gordon, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984).
- (3) Even if Hanson and Thibodeau were combined in the manner proposed, the proposed combination would not show the novel physical features of claim 6 as amended. There also would be no reasonable expectation of success for such a combination. In re Vaack, 20 USPQ2d 1438 (Fed.Cir 1991)
- (4) These novel features of claim 6 as amended produce new results and hence are unobvious and patentable over Hanson and Thibodeau.
- (5) Applicant's invention solves a different problem than the references address, and such different problem is recited in the claims. In re Wright, 6 USPQ 1959 (1988).

Prior to discussing the claims and the above five points, Applicants will first discuss the cited references and the general novelty of the present invention as now claimed and its unobviousness over the references.

Hanson is directed to an adjustable leg structure utilizing leg braces, clamping bolts, leaf springs and slotted legs for supporting various articles and structures at various heights relative to a floor, table or other supporting structure. Hanson illustrates

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one use of his invention with a portable cooking stove in Figure 1. Applicant's invention does not disclose, claim or contemplate the use of adjustable legs, nor do Applicants disclose a portable cooking stove. More specifically, and to the contrary, Applicant's invention *inter alia*, is directed to a specialized portable stand for directly supporting one or more Dutch Ovens and not to a: portable stove, barbeque grill or similar cook stove. Hanson was never intended to be used as a Dutch Oven stand (Note: same applies to Chen) and at best Hanson illustrates the use of adjustable legs with a portable cooking stove. One of ordinary skill in the art would not look to Hanson or for that matter to portable cooking stoves, barbeque grills and the like (i.e. references like Chen) for any teachings for implementation or design of a stand to support or level a Dutch Oven in the manner of the present invention, to reduce the risk of unwanted fire.

Thibodeau discloses a bubble level for use with a camp stove (page 2, lines 50-54). It is well known that a bubble level uses an air bubble confined in a liquid. Thibodeau bubble level does not address the need for a level to be affixed to a very hot surface as does the Applicant in the context of a Dutch Oven Stand. In fact, Thibodeau describes his invention in the context of a camp stove wherein burners 20 and 18 receive fuel from known containers such as propane cylinders (page 1, lines 62-65) and the heat generated is confined to the burners 20 and 18 and to the cook surface area grill 22. Heat at the location of the leveler in Thibodeau was not contemplated or addressed by Thibodeau. Nor does Thibodeau disclose the necessary physical structure required for a heat resistant leveling device for use in connection with a Dutch Oven Stand. Thibodeau in fact teaches away from the need for a level at or on a hot surface by referring to the use of a bubble level, which inherently is not heat resistant. Again, Thibodeau was never intended to be used with a Dutch Oven Stand nor is it practical to use Thibodeau with Applicant's Dutch Oven Stand where temperatures are very hot.

HANSON AND THIBODEAU DO NOT CONTAIN ANY JUSTIFICATION, SUGGESTION, OR EVIDENCE OF ANY MOTIVATING FORCE WHICH WOULD LEAD ONE SKILLED IN THE ART TO DO WHAT THE APPLICANT'S HAVE DONE.

With regard to the proposed combination of Hanson and Thibodeau, it is well known that in order for any prior-art references themselves to be validly combined for

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use in an prior-art § 103 rejection, *the references themselves* (or some other prior art) must suggest that they be combined. E.g., as was stated in In re Semaker, 217 U.S.P.Q. 1, 6 (C.A.F.C. 1983):

"[P]rior art references in combination do not make an invention obvious unless something in the prior art would suggest the advantages to be derived from combining their teachings."

As was further stated in Uniroyal, Inc. v. Rudkin-Wiley Corp., 5 U.S.P.Q.2d 1434 (C.A.F.C. 1988), "[w]here prior-art references require selective combination by the court to render obvious a subsequent invention, there must be some reason for the combination other than hindsight gleaned from the invention itself...Something in the prior art must suggest the desirability and thus the obviousness of making the combination." [Emphasis added]

In line with these decisions, the Board stated in Ex parte Levengood, 28 U.S.P.Q.2d 1300 (P.T.O.B.A. & I. 1993):

"In order to establish a *prima facie* case of obviousness, it is necessary for the examiner to present *evidence*, preferably in the form of some teaching, suggestion, incentive or inference in the applied prior art, or in the form of generally available knowledge, that one having ordinary skill in the art *would have been led* to combine the relevant teachings of the, applied references in the proposed manner to arrive at the claimed invention. ...That which is within the capabilities of one skilled in the art is not synonymous with obviousness. ... That one can *reconstruct* and/or explain the theoretical mechanism of an invention by means of logic and sound scientific reasoning does not afford the basis for an obviousness conclusion unless that logic and reasoning also supplies sufficient impetus to have led one of the ordinary skill in the art to combine the teachings of the references to make the claimed invention. ... Our reviewing courts have often advised the Patent and Trademark Office that it can satisfy the burden of establishing a *prima facie* case of obviousness only by showing some objective teaching in either the prior art, that 'would lead' that individual 'to combine the relevant teachings of the references.' ... Accordingly, an examiner cannot establish obviousness by locating references which describe various aspects of a patent applicant's invention without also providing evidence of the motivating force which would impel one skilled in the art to do what the patent applicant has done."

In the present case, there is no reason given in the last O.A. to support the proposed combination, other than the statement: "*It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the cooking*

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stand of Hanson with a leveling means such as taught by Thibodeau in order to assure correct leveling of a cooking oven of the base assembly." (O.A. pg 4.)

As set out above, the teaching of Hanson is for an adjustable leg structure and Thibodeau discloses a bubble leveler for the use with portable stoves. The instant invention does not provide a bubble level nor does it provide for adjustable legs. Further neither reference is related to Dutch Ovens, and one of ordinary skill in the art would not look to the complicated adjustable leg structure Hanson or to the Thibodeau bubble level to make the last O.A.'s proposed combination.

More specifically, traditional Dutch Oven cooking requires the use of coals placed beneath and on-top of the Dutch oven itself. The Dutch Oven gets very hot during use and the actual cooking of food takes place inside the Dutch Oven and not on any grilling surface. One of ordinary skill in the art would not look to barbeque grills, gas grills or the like to devise a stand for Dutch Ovens as contemplated by Applicants, especially where an important purpose of Applicant's invention is safety to reduce the likelihood of unwanted fires, created by the use of an open fire and/or the placement and use of charcoals placed on the ground. (See, Specification at pg 3, paragraph [0008]) The combined references are devoid of any such teaching, suggestion or motivation.

Thibodeau, as noted above, in particular shows a gas (propane) operated stove with a bubble level. Hanson, shows a portable stove. Both references show grilling surfaces for food. Applicant's invention discloses and claims (as now amended) (Claims 1 and new claims 11 and 12) a Dutch Oven cooking stand with a purpose to reduce the likelihood of unwanted fire while cooking in a Dutch Oven.

Claim 6 as amended, specifically calls for a heat resistant leveling means which is affixed to the sides of said Dutch Oven stand. These limitations are not taught by the art referenced in the last O.A. and therefore are not *prima facie* obvious. In re Vaeck, 20 USPQ2d 1438 (Fed. Cir. 1991).

To further re-emphasize this point, Hanson and Thibodeau as discussed above, show grills used with portable stoves. Applicant's invention is not directed to cooking foods on a cooking grill, portable stove or the like. In fact the use of a grill or grate teaches away (and literally gets in the way of the Dutch Oven from being placed on the base of the stand) from Applicant's invention, *ie.* the provision of a portable sturdy stand for holding hot solid cooking fuel in safe proximity from surrounding environment and a Dutch oven thereupon. Applicants therefore respectfully believes their amendment to

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claim 1, claim 6 and new claims 11 and 12 more clearly and distinctly define the invention patentably over the referenced art.

NOT OPERATIVE: Insofar as the instant rejection in the last O.A. as to claim 6, the bubble level of Thibodeau would not work in the high heat environment of Applicant's invention. The liquid would boll away rendering the level of Thibodeau inoperative. Applicant has amended claim 6 to more particularly define patentably over Thibodeau and the referenced art. In particular, the level must be able to operate at high temperatures and must be made out of the same material as the base assembly, to allow for operation at high temperatures.

As to then amended claim 1, and to the new claims 11 and 12, using a food cooking grill(s) or grate(s) as shown in the references is not operative in the context of Applicant's invention as Applicant's stand as claimed holds and contains the solid fuel (i.e. charcoals) directly beneath a Dutch oven which is placed onto the stand on top of the solid fuel which is also resting on the base of the stand of Applicant's invention. The references such as Thibodeau, Hanson (and Chen) teach away from the use of a Dutch oven and Dutch oven stand.

Again, as stated previously, Hanson and Thibodeau show grills used with portable stoves. Applicant's invention as claimed is not directed to cooking foods on a cooking grill, portable stove or the like. In fact the use of a grill or grate teaches away (and literally gets in the way of the Dutch Oven from being placed on the base of the stand) from Applicant's invention, *ie.* the provision of a portable sturdy stand for holding hot solid cooking fuel in safe proximity from surrounding environment and a Dutch oven thereupon. Claim 1 as amended specifically requires an uncovered and unobstructed receptacle for supporting *inter alia* a Dutch Oven directly on the base of such stand. These limitations are also contained in new claims 11 and 12.

Neither Hanson or Thibodeau address the need for reducing the likelihood of creating and unwanted fire while cooking with a Dutch Oven as does Applicant. (Note: Chen for instance has ventilation perforations that teach away from the solid base as now claimed of the instant invention, which reduces the likelihood of hot fuel from coming into contact wit the ground and causing an unwanted fire).

THE COMBINATION IN THE O.A. WOULD NOT SHOW NOVEL FEATURES AS NOW CLAIMED: In as much as Hanson and Thibodeau each disclose portable stoves with

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grills.... a combination of the two references would not show the novel features of Applicant's invention as presently claimed.

Applicant's invention does not claim a grilling surface of any kind. Also, in as much as Applicant does not claim adjustable legs or a bubble level...adding the bubble level of Thibodeau to Hanson, would result in a stove or barbeque with a grilling surface with adjustable legs and a bubble level. Again, as previously discussed, the O.A.'s suggested combination of Thibodeau and Hanson is not the Applicant's invention nor is it claimed, nor would such combination work in the context of Applicant's Dutch Oven stand invention.

NEW RESULTS: Applicant's invention produces a new result. Heretofore, with respect to the O.A. there is no known reference showing the use of heat resistant level with a Dutch Oven Stand such as Applicant's, where Applicant uses a specialized leveling means to level a hot Dutch Oven stand in the context of reducing the likelihood of unwanted fire while cooking with a Dutch Oven. Again, Thibodeau was solving a leveling problem in the context of a portable gas stove where heat at the point of the leveling device was not a concern..... not the leveling problem in the context of a very hot Dutch Oven Stand.

APPLICANT'S INVENTION SOLVES A DIFFERENT PROBLEM WHICH IS CITED IN THE CLAIMS: Applicant's invention solves a different problem than the cited references. Applicant provides a means for leveling that works at high temperatures. Applicant's invention also reduces the risk of an unwanted fire in the context of cooking with a Dutch Oven. Hanson and Thibodeau do not solve either of these problems. Applicant refers to heat resistant in the amended claim 6 and the problem of the base assembly being at high temperatures. Also, note Applicant's invention as now claimed in amended claim 1, new claims 11 and 12 also refers to the problem of reducing the chance of unwanted fire while cooking in a Dutch Oven.

Applicants therefore respectfully submit that the last O.A.'s combination of Hanson and Thibodeau is not legally justified and is therefore improper to reject claim 6, especially in view of the amendments to claim 6.

Further, Applicant submits that Applicant's amendments to the claims, in particular claim 1 and new claims 11 and 12 have further distinguished Applicant's

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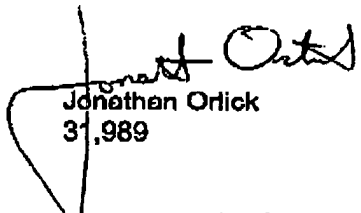
invention over the cited references, and that the claims as now presented are of patentable merit not only under Section 102 but also under Section 103.

Applicants respectfully request, if the claims are again rejected upon any combination of references, that the examiner please include an explanation, in accordance with M.P.E.P. § 706.02. Ex parte Clapp, 27 U.S.P.Q. 972 (P.O.B.A. 1985), and Ex parte Levengood, supra, a "factual basis to support his conclusion that would have been obvious" to make the combination.

CONCLUSION

For all the above reasons, Applicants submit the specification and claims are now in proper form, and that the claims all define patentably over the prior art. Therefore they submit that this application is now in condition for allowance, which action they respectfully solicit. If for any reason this application is not believed to be in full condition for allowance, Applicant's respectfully requests examiner to contact the undersigned with constructive assistance and suggestions so that the undersigned can place this application in allowable condition as soon as possible and without the need for further actions.

Very respectfully,


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Certificate of Facsimile Transmission. I certify that on the date below I will fax this paper to GAU 3749 of the U.S. Patent and Trademark Office at 703-872-9306.

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